

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 8531 OF 2004.

Sudhir Haribhau Umbaranikar & Ors.....

..Petitioners.

V/s

Suresh Ganesh Kango..... ..

. Respondent.

Smt. Anita Agarwal for the petitioners.

Shri G.S. Godbole for respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

13-12-2004

PC:

Heard the learned advocates for the parties.

The petitioner challenges decree of eviction passed by the trial Court and confirmed by the lower Appellate Court on three grounds viz. (i) bonafide need of the premises to the respondent-landlord; (ii) acquisition of alternate suitable premises by the petitioner and (iii) non-user of the suit premises for the purpose for which it was leased out for a period of six months immediately prior to the date of institution of suit. On hearing the learned advocates for the parties, though there could be some case for consideration of the petition in relation to eviction order pertaining to bonafide need of the premises as well as acquisition of alternate premises, fact remains that there are

concurrent findings on the point of nonuser of the premises for a period of six months immediately prior to the filing of the suit and the same are clearly borne out from the record and do not warrant any interference. The analysis of evidence on record reveal from the findings arrived at by the Court below clearly disclose that from October 1995 to December, 1996 the premises were not at all used by the petitioner. The record pertaining to the non consumption of electricity for the suit premises during the said period clearly establish the said fact. There was absolutely no attempt on the part of the petitioner to lead any evidence contrary to the materials on record about the closure of the premises during the said period apart from mere claim that the petitioners were using the premises during week ends. Attention was also sought to be drawn to the fact that initially the defendant No.2 was joined on the allegation that he might have been residing with Lilabai in the suit premises and referring to the same it was sought to be contended that there was an admission on the part of respondent about the occupation of the suit premises by the petitioners. Admittedly the defendant No.2 was subsequently deleted, besides the said statement in the pleadings should be read in the context that Lilabai continued to reside in the premises till her death and during her life time her son was staying at Pune and therefore might have been residing with Lilabai. The statement having been made in that context and there being no evidence led to establish that during the relevant period from October 1995 till December, 1996 the premises were in occupation and use of the tenant, the petitioner has to establish that the case of the respondent regarding nonuser of the premises for the relevant period is false. On the contrary the other evidence on record clearly establishes the said case of the respondent and such evidence include the document pertaining to disconnection and surrender of

telephone which was available in the suit premises upto 1993 and further the bills regarding electricity which were produced for the period subsequent to filing of the suit which disclosed consumption of electricity. It is also not a case of the petitioner that the electricity meter was not functioning during the relevant period. On the contrary production of the bills for the subsequent period disclose consumption of electricity in relation to the suit premises and reveal that the meter was functioning properly and it did not disclose consumption of single unit for the period from October, 1995 to December, 1996. Undisputedly suit was filed on 18.3.1997 and there was absolutely no evidence on record to disclose use of the premises prior to the institution of the suit for more than six months. Therefore the eviction decree passed on the basis of non user of the premises for more than six months prior to the filing of the suit does not warrant interference. Since the landlord is entitled to seek eviction of the tenant on any one ground even though the grounds pleaded were more than one, merely because the respondent may not be able to justify the decree on the ground of bonafide need and/or acquisition of alternate premises, fact remains that the decree on the ground of non user of the premises stands. Hence there is no case for interference in the impugned order in exercise of powers under Article 227 of the Constitution.

2. It was also sought to be contended that the trial Court did not consider the issue regarding part eviction. Admittedly there were neither any pleadings nor any material placed on record so as to enable the Court below to apply its mind into the issue of partial eviction from the suit premises. That being so, no fault can be found with the Court below for having not considered the said aspect. For the reasons recorded above

therefore the petition is dismissed.

3. At this stage on oral request by the learned advocate for petitioner execution of decree for eviction shall remained suspended till 31st March, 2005 subject to the petitioner and all the adult members of the family filing usual undertaking before the Registry to the effect that they will not induct any third person in the suit premises nor part with possession and shall deliver vacant and peaceful possession of the suit premises to the respondent-landlord on or before 31st March, 2005. In case of failure to submit such an undertaking within a period of five weeks from today the order passed today suspending the execution of decree shall stand vacated automatically without reference to the Court.